IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7243 OF 2007

ALONGWITH

WRIT PETITION NO. 7244 OF 2007

Harish Aswani .... Petitioner

versus

Returning officer, The Seva Vikas Sahakari Bank ltd. & ors..... Respondents.

Mr. Girish Godbole for the petitioner.
Mr. A.A. Kumbhakoni,Associate Adv. Gen. with Mr. S.R.Nargolkar AGP for State of Maharashtra.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH SEPTEMBER, 2007

P.C.;

1. The petitioners are members of respondent no.2 bank, which is a notified society. The election process for electing Board of Directors of the Bank has commenced. Perusal of the election programme reveals that, 29-9-2007 is the last date for withdrawal of the nomination forms. The petitioner's nomination form came to be rejected by the Returning Officer and aggreived thereby the petitioner filed an appeal. The appeal has been dismissed and hence the writ petitions are filed.

2. The nomination form of the petitioners has been

rejected by placing reliance on bye-law No.31(iii), which lays down eligibility criteria for election as Director. The returning officer and the Appellate Authority have found that the bank has given a bank guarantee to a third party and in the event, if the bank guarantee is invoked by the third party, the petitioners had guaranteed to indemnify the bank. In the submission of the learned counsel for the petitioners, the contract in question is one of indemnity and the petitioner cannot be termed as a guarantor as envisaged by bye-law no.33. It is also pointed out that besides the indemnity, the petitioners have also secured the bank by giving yet another security in the form of fixed deposit for the entire amount. It is thus contended by the petitioner that he does not incur disqualification under bye-law no.33(iii), whereas it is the case of the respondent that the petitioner assumes the character of a guarantor and thus incurs disqualification. The point is arguable.

3. These petitions are not capable of being disposed of without obstructing or haulting the election process, which is impermissible in view of the judgment of the Supreme Court in ‘Sant Satguru’s case’. I am not inclined to exercise the discretion in favour of the petitioners by entertaining the

petitions. The petitioners have also challenged the validity of bye-law no.33(iii). Leaving all questions open to be agitated before the appropriate forum in appropriate proceedings, I dismiss the writ petitions summarily. The learned counsel for the petitioners submit that the judgment of the Supreme Court in Sant Satguru's case has been diluted and explained in subeuent judgments.

4. Perused the judgments. The said judgments are rendered in peculiar facts of those cases. Law laid down in Sant Satguru's case hold the field. Writ Petitions are summarily dismissed.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7240 OF 2007

ALONGWITH

WRIT PETITION NO. 7241 & 7247 OF 2007

Hiranand Kimatrao Aswani .... Petitioner

versus

Returning officer, The Seva Vikas Sahakari Bank ltd. & ors..... Respondents.

Mr. Y.S.Jahagirdar Sr. Adv. with Girish Godbole for the petitioner.
Mr. Ravi Kadam Adv. Gen. with Mr. S.R.Nargolkar AGP for State of Maharashtra.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH SEPTEMBER, 2007

P.C.;

1. The petitioners are members of respondent bank, which is a notified society. The election process for electing Board of Directors of the Ban has commenced. Perusal of the election programm reveals that, 29-9-2007 is the last date for withdrawal of the nomination forms. The petitioner’s nomination form

came to be rejected by the Returning Officer and aggreived thereby the petitioner filed an appeal. The appeal has been dismissed and hence these writ petitions are filed.

2. Under bye-law No.31(iii) a borrower or a guarantor is disqualified from contesting the election as a Director, if there exists a liability on the first day of filing of nomination forms. Nomination forms were to be filed on 5-9-2007. Scrutiny of the nomination was made on 13-9-2007. After rejection of the nomination form, the petitioners have procured a certificate from the bank that on 14-9-2007 the petitioner is not indated to the bank. The returning officer so also the appellate authority has found that the petitioner stands disqualified under bye-law No.31(iii). I do not find any fault with the finding recorded by the authorities below.

3. It is next submitted that the petitioners are challenging the validity of bye-law No.31(iii) on the ground that the said bye law is in conflict with the object sought to be achieved by the society in as much as the object of the society is to advance loan to the members. Whereas under bye law no.31(iii), a member incurs disqualification if he is liable to pay any amount to the bank on the first day of filing of

nomination papers. The respsondents on the other hand are contending that bye law no.31(iii) by itself goes to achieve the object of avoiding conflict between duty and interest faced by the person who is elected as director. I need not go to the larger questions that are raised in this petition, as I am of the clear view that it will not be possible to decide the writ petition before the election concludes without obstructing or haulting the election process. Hence I decline to exercise discretion in favour of the petitioner. Leaving all questions raised in this petition open to be agitated before appropriate forum in appropriate proceedings, writ petitions are summarily dismissed. It is expressly made clear that it shall be open for the petitioner to challenge the election after declaration of the result by filing election petition.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 7238 OF 2007

ALONGWITH

WRIT PETITION NO. 7239, 7242,7249, 7245, 7246 and 7248 OF 2007

Dhanraj N. Aswani .... Petitioner

versus

Returning officer, The Seva Vikas Sahakari Bank ltd. & ors..... Respondents.

Mr. Girish Godbole for the petitioner.

Mr. A.A. Kumbhakoni,Associate Adv. Gen. with Mr. S.R.Nargolkar AGP for State of Maharashtra.

CORAM; A.P. DESHPANDE, J.
DATED; 28TH SEPTEMBER, 2007

P.C.;

1. The petitioners are members of respondent no.2 bank, which is a notified society. The election process for electing Board of Directors of the Bank has commenced. Perusal of the election programme

reveals that, 29-9-2007 is the last date for withdrawal of the nomination forms. The petitioner's nomination form came to be rejected by the Returning Officer and aggreived thereby the petitioner filed an appeal. The appeal has been dismissed and hence the writ petitions are filed.

2. The petitioners are challenged the rejection of the nomination mainly on the ground that bye law no.31(iii) is invalid being in conflict with the object sought to be achieved by the society viz. advancing money to its members. The respondents submit that the bye law goes to achieve a definite purpose and the same is to avoid conflict between interest and duty, after a person is elected as director. I do not propose to adjudicate this issue in these writ petitions. I am sure that it will not be possible to dispose of the petition before the election is over without the election process being obstructed or haulted.

3. Leaving all questions raised in this petition open to be agitated before appropriate forum in appropriate proceedings, writ petitions are summarily dismissed. However it is expressly made clear that it shall be open for the petitioner to challenge the election after declaration of the result of the election by

filing election petition.

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